

PART 122--EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

1. The authority citation for part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 et seq.

2. Amend § 122.21 by adding subparagraphs (i)(1)(iv) through (ix) to read as follows:

§ 122.21 Application for a permit (applicable to State programs, see § 123.25).

* * * * *

(i) * * *

(1) * * *

(iv) Either a copy of the cover sheet and executive summary of the permittee's current Permit Nutrient Plan that meet the criteria in 40 CFR 412.37(b) and is being implemented, or draft copies of these documents together with a statement on the status of the development of its Permit Nutrient Plan. If the CAFO is subject to 40 CFR Part 412 and draft copies are submitted, they must, at a minimum, demonstrate that there is adequate land available to the CAFO operator to comply with the land application provisions of part 412 of this Chapter, if applicable, or describe an alternative to land application that the operator intends to implement.

(v) Acreage available for application of manure and wastewater;

(vi) Estimated amount of manure and wastewater that the applicant plans to transfer off-site;

(vii) Name and address of any person or entity that owns animals to be raised at the facility, directs the activity of persons working at the CAFO, specifies how the animals are grown, fed, or medicated, or otherwise exercises control over the operations of the facility;

(viii) Indicate whether buffers, setbacks or conservation tillage are implemented at the facility to control runoff and protect water quality; and

(ix) Latitude and longitude of the CAFO, to the nearest second.

3. Section 122.23 is revised to read as follows:

§ 122.23 Concentrated animal feeding operations (applicable to State NPDES programs, see § 123.25).

(a) **Definitions applicable to this section:**

(1) For land on which manure from an animal feeding operation or concentrated animal feeding operation has been applied, the term "agricultural storm water discharge" means a discharge composed entirely of storm water, as defined in § 122.26(a)(13), from a land area upon which manure and/or wastewater has been applied in accordance with proper agricultural practices, including land application of manure or wastewater in accordance with either a nitrogen-based or, as required, a

phosphorus-based manure application rate.

(2) An *animal feeding operation or AFO* is a facility where animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period. Animals are not considered to be stabled or confined when they are in areas such as pastures or rangeland that sustain crops or forage growth during the entire time that animals are present. Animal feeding operations include both the production area and land application area as defined below.

OPTION 1 FOR PARAGRAPH (a)(3)

(3) *Concentrated animal feeding operation or CAFO* means an AFO that either:

(i) Confines a number of animals equal to or greater than the number specified in any one or more of the following categories. For the purposes of determining the number of animals at an operation, two or more AFOs under common ownership are considered to be a single AFO if they adjoin each other or if they use a common area or system for the disposal of wastes. Once an operation is defined as a CAFO, the requirements of this section apply with respect to all animals in confinement at the operation and all wastes and waste waters generated by those animals, regardless of the type of animal.

- (A) 350 mature dairy cattle;
- (B) 500 veal;
- (C) 500 cattle other than veal or mature dairy cattle;
- (D) 1,250 swine each weighing over 25 kilograms (approximately 55 pounds);
- (E) 5000 swine each weighing less than 25 kilograms (approximately 55 pounds);
- (F) 250 horses;
- (G) 5,000 sheep or lambs;
- (H) 27,500 turkeys;
- (I) 50,000 chickens; or
- (J) 2,500 ducks; or

(ii) Is designated as a CAFO under paragraph (b) of this section.

OPTION 2 FOR PARAGRAPH (a)(3):

(3) *Concentrated animal feeding operation or CAFO* means an AFO which either is defined as a CAFO under paragraph (a)(3)(i) or (ii) of this section, or is designated as a CAFO under paragraph (b) of this section. Two or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes. Once an operation is defined as a CAFO, the requirements of this section apply with respect to all animals in confinement at the operation and all wastes and waste waters generated by those animals, regardless of the type of animal.

(i) **Tier 1 AFOs.** An AFO is a CAFO if more than the numbers of animals specified in any of the following categories are confined:

- (A) 700 mature dairy cattle;
- (B) 1,000 veal;
- (C) 1,000 cattle other than veal or mature dairy cattle;
- (D) 2,500 swine each weighing over 25 kilograms (approximately 55 pounds);

- (E) 10,000 swine each weighing less than 25 kilograms (approximately 55 pounds);
- (F) 500 horses;
- (G) 10,000 sheep or lambs;
- (H) 55,000 turkeys;
- (I) 100,000 chickens; or
- (J) 5,000 ducks.

(ii) **Tier 2 AFOs.** (A) If the number of animals confined at the operation falls within the following ranges for any of the following categories, the operation is a Tier 2 AFO. A Tier 2 AFO is a CAFO unless it meets all of the conditions in paragraph (a)(3)(ii)(B) of this section and its operator submits to the Director a certification that it meets those conditions. The certification shall take the form specified in section 122.22(d).

- (1) 200 to 700 mature dairy cattle,
- (2) 300 to 1,000 veal,
- (3) 300 to 1,000 cattle other than veal or mature dairy cattle,
- (4) 750 to 2,500 swine each weighing over 25 kilograms (approximately 55 pounds),
- (5) 3,000 to 10,000 swine each weighing less than 25 kilograms (approximately 55 pounds),
- (6) 150 to 500 horses,
- (7) 3,000 to 10,000 sheep or lambs,
- (8) 16,500 to 55,000 turkeys,
- (9) 30,000 to 100,000 chickens, or
- (10) 1,500 to 5,000 ducks.

(B) A Tier 2 AFO is not a CAFO if it meets all of the following conditions and its operator submits to the Director a certification that it meets the following conditions:

- (1) Waters of the United States do not come into direct contact with the animals confined in the operation;
- (2) There is sufficient storage and containment to prevent all pollutants from the production area from entering waters of the United States as specified in 40 CFR Part 412.
- (3) There has not been a discharge from the production area within the last five years;
- (4) No part of the production area is located within 100 feet of waters of the United States;
- (5) In cases where manure or process-generated wastewaters are land applied, they will be land applied in accordance with a Permit Nutrient Plan that includes the BMP requirements identified at 40 CFR 412.31(b) and 412.37; and

OPTION 1 FOR PARAGRAPH (a)(3)(ii)(B)(6):

(6) With respect to the off-site transfer of manure or process-generated wastewaters to persons who receive 12 tons or more of manure or wastewater in any year, the owner or operator will first obtain assurances that, if the manure will be land applied, it will be applied in accordance with proper agriculture practices, which means that the recipient shall determine the nutrient needs of its crops based on realistic crop yields for its area, sample its soil at least once every three years to determine existing nutrient content, and not apply the manure in quantities that exceed the land application rates calculated using one of the methods specified in 40 CFR 412.31(b)(1)(iv); adequate assurances include a certification from the recipient, the fact that the recipient has a permit, or the

existence of a State program that requires the recipient to comply with requirements similar to 40 CFR 412.31(b). The owner or operator will provide the recipient of the manure with a brochure to be provided by the state permitting authority or EPA that describes the recipient's responsibilities for appropriate manure management.

OPTION 2 FOR PARAGRAPH (a)(3)(ii)(B)(6):

(6) With respect to manure or process-generated wastewaters that are transferred off-site, the owner or operator will first provide the recipient of the manure with an analysis of its content and a brochure to be provided by the State permitting authority or EPA that describes the recipient's responsibilities for appropriate manure management.

(4) The term *land application area* means any land under the control of the owner or operator of the production area whether it is owned, rented, or leased, to which manure and process wastewater from the production area is or may be applied.

(5) The term *operator*, for purposes of this section, means:

(i) An operator as that term is defined in § 122.2; or

(ii) A person who the Director determines to be an operator on the basis that the person exercises substantial operational control of a CAFO. Whether a person exercises substantial operational control depends on factors that include, but are not limited to, whether the person:

(A) Directs the activity of persons working at the CAFO either through a contract or direct supervision of, or on-site participation in, activities at the facility;

(B) Owns the animals; or

(C) Specifies how the animals are grown, fed, or medicated.

(6) The term *production area* means that part of the AFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyard, exercise yards, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, sheds, liquid impoundments, static piles, and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins, and areas within berms, and diversions which separate uncontaminated storm water. Also included in the definition of production area is any eggwash or egg processing facility.

(b) **Designation as a CAFO.** The EPA Regional Administrator, or in States with approved NPDES programs, either the Director or the EPA Regional Administrator, may designate any AFO as a CAFO upon determining that it is a significant contributor of pollutants to the waters of the United States.

(1) In making this designation, the Director or the EPA Regional Administrator shall consider the following factors:

(i) The size of the AFO and the amount of wastes reaching waters of the United States;

(ii) The location of the AFO relative to waters of the United States;

(iii) The means of conveyance of animal wastes and process waste waters into waters of the United States;

(iv) The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process waste waters into waters of the United States; and,

(v) Other relevant factors.

OPTION 1 FOR PARAGRAPH (b)(2)

(2) No AFO shall be designated under this paragraph (b) until the Director or the EPA Regional Administrator has conducted an on-site inspection of the operation and determined that the operation should and could be regulated under the permit program; except that no inspection is required to designate a facility that was previously defined or designated as a CAFO.

OPTION 2 FOR PARAGRAPH (b)(2)

(2) No AFO shall be designated under this paragraph (b) until the Director or the EPA Regional Administrator has conducted an on-site inspection of the operation and determined that the operation should and could be regulated under the permit program; except that no inspection is required to designate a facility that was previously defined or designated as a CAFO. In addition, no AFO with less than 300 animal units may be designated as a concentrated animal feeding operation unless:

(i) Pollutants are discharged into waters of the United States through a manmade ditch, flushing system, or other similar manmade device; or

(ii) Pollutants are discharged directly into waters of the United States which originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(c) Who must apply for an NPDES permit?

(1) *All CAFOs must apply for a permit.* For all CAFOs, the CAFO owner or operator must apply for an NPDES permit, except as provided in paragraph (c)(2) of this section. Specifically, the CAFO owner or operator must either apply for an individual NPDES permit or submit a notice of intent for coverage under a CAFO general permit. If the Director has not made a general permit available to the CAFO, the CAFO owner or operator must apply for an individual permit.

(2) *Exception.* The CAFO owner or operator does not need to apply for an NPDES permit if the owner or operator has received from the Director a determination under paragraph (e) of this section that the CAFO has no potential to discharge.

(3) *Co-permitting.* Any person who is an “operator” of a CAFO on the basis that the person exercises substantial operational control of a CAFO (see §122.23(a)(5)(ii)) must apply for a permit. Such operators may apply for an NPDES permit either alone or together as co-permittees with other owners or operators of the CAFO.

(d) **In which case will the Director not issue an NPDES permit?** The Director shall not issue an NPDES permit if the Director has determined that the CAFO has “no potential to discharge” pursuant to paragraph (e) of this section.

(e) “No potential to discharge” determinations.

(1) *Determination by Director.* The Director, upon request, may make a case-specific determination that a CAFO has no potential to discharge pollutants to waters of the United States. In making this determination, the Director must consider the potential for discharges from both the production area and any land application areas, and must also consider any potential discharges via

ground waters that have a direct hydrologic connection to surface waters. For purposes of this subsection, the term “no potential to discharge” means that there is no potential for any CAFO manure or waste waters to be added to waters of the United States, without qualification. For example, a CAFO may not claim that there is no potential to discharge even if the only pollutants that the CAFO has a potential to discharge would be exempt from NPDES requirements. A CAFO has a potential to discharge if it has had a discharge within the preceding five years.

(2) Supporting information. In requesting a determination of no potential to discharge, the CAFO owner or operator must submit any supporting information along with the request. The Director has discretion to accept or reject any additional information that is submitted at a later date.

(3) Requesting a “no potential to discharge” determination does not postpone the duty to apply for a permit. The owner or operator must apply for a permit according to the date specified in section (f) unless it has received a no potential to discharge determination before that date.

(4) CAFO bears the risk of any actual discharge. Any unpermitted CAFO that discharges pollutants into the waters of the United States is in violation of the Clean Water Act even if it has received a “no potential to discharge” determination from the Director.

(f) By when must I apply for a permit for my CAFO?

(1) For all CAFOs, the owner or operator of the CAFO must apply for an NPDES permit no later than [insert date that is three years after the date of publication of the final rule], except as provided in subsections (2) through (6).

(2) Operations that are defined as CAFOs prior to [insert date that is three years after the date of publication of the final rule]. For operations that are CAFOs under regulations that are in effect prior to [insert date that is three years after the date of publication of the final rule], the owner or operator must apply for an NPDES permit under 40 CFR 122.21(a) within the time period specified in 40 CFR 122.21(c).

(3) Operations that become CAFO new sources or new dischargers after [insert date that is three years after the date of publication of the final rule]. For operations that meet the criteria in 40 CFR 122.23 for being defined as a CAFO for the first time after [insert date that is three years after the date of publication of the final rule], the owner or operator must apply for an NPDES permit 180 days prior to the date on which they first meet those criteria.

(4) Operations that are designated as CAFOs. For operations for which EPA or the Director has issued a case-specific designation that the operation is a CAFO, the owner or operator must apply for a permit no later than 90 days after issuance of the designation.

(5) Persons who are operators because they exercise “substantial operational control” over a CAFO. Persons who the Director determines to be operators because they exercise substantial operational control over a CAFO must apply for a permit within 90 days of the Director’s determination.

(6) No potential to discharge. Notwithstanding any other provision of this section, a CAFO that has received a “no potential to discharge” determination under paragraph (e) of this section is not required to apply for an NPDES permit.

(g) Are AFOs subject to Clean Water Act requirements if they are not CAFOs? AFOs that are neither defined nor designated as CAFOs are subject to NPDES permitting requirements if

they discharge the following from a point source:

(1) *Non-wet weather discharges*: discharges from their production area or land application area that are not composed entirely of storm water as defined in § 122.26(b)(13).

(2) *Wet weather discharges*: discharges from their land application area that are composed entirely of storm water as defined in § 122.26(b)(13), if the discharge has been designated under § 122.26(a)(1)(v) as requiring an NPDES permit. Discharges may be designated under § 122.26(a)(1)(v) if they are not agricultural storm water discharges as defined in § 122.23(a)(1).

(h) If I do not operate an AFO but I land apply manure, am I required to have a NPDES permit? If you have not been designated by your permit authority, you do not need a NPDES permit to authorize the discharge of runoff composed entirely of storm water from your manure application area. The land application of manure that results in the point source discharge of pollutants to waters of the United States may be designated pursuant to § 122.26(a)(1)(v) as requiring a NPDES permit if the application is not in accordance with proper agriculture practices. Proper agricultural practices means that the recipient shall determine the nutrient needs of its crops based on realistic crop yields for its area, sample its soil at least once every three years to determine existing nutrient content, and not apply the manure in quantities that exceed the land application rates calculated using one of the methods specified in 40 CFR 412.31(b)(1)(iv).

(i) What must be required in NPDES permits issued to CAFOs. Permits issued to CAFOs must require compliance with the following:

(1) All other requirements of this part.

(2) The applicable provisions of part 412.

(3) *Duty to Maintain Permit Coverage*. No later than 180 days before the expiration of the permit, the permittee must submit an application to renew its permit. However, the permittee need not reapply for a permit if the facility is no longer a CAFO (e.g., where the numbers of confined animals has been reduced below the level that meets the definition of a CAFO) and the permittee has demonstrated to the satisfaction of the Director that there is no remaining potential for a discharge of manure or associated waste waters that were generated while the operation was a CAFO. With respect to CAFOs, this section applies instead of §§ 122.21(d) and 122.41(b).

(4) *Co-permittees*. In the case of a permit issued to more than one owner or operator of the CAFO, the permit may allocate to one of the permit holders the sole responsibility for any permit requirement, except that all permit holders must be jointly responsible for the management of manure in excess of what can be applied on-site in compliance with part 412

(5) Permits issued to CAFOs that meet the applicability requirements of Subpart C (Beef and Dairy) or Subpart D (Swine, Poultry and Veal) of 40 CFR Part 412 shall also require compliance with paragraph (j) of this section.

(6) Permits issued to CAFOs that do not meet the applicability requirements of Subpart C or Subpart D of 40 CFR Part 412 (including beef, dairy, swine, poultry or veal facilities not subject to those parts, and facilities with other types of animals) shall also require compliance with paragraph (k) of this section.

(j) What must be required in NPDES permits issued to CAFOs that are subject to part 412, Subparts C (Beef and Dairy) and D (Swine, Poultry and Veal)? Permits issued to

CAFOs that meet the applicability requirements of Subpart C or Subpart D of 40 CFR Part 412 must require compliance with all of the following:

(1) Requirements to use the method in 40 CFR 412.31(b)(1)(iv) chosen by the Director to determine phosphorous field conditions and to determine appropriate manure application rates. The permit shall specify the factors to be considered and the analytical methods to be employed when determining those rates.

(2) Prohibitions against or restrictions on applying manure to land during times and using methods which, in light of local crop needs, climate, soil types, slope and other factors, would not serve an agricultural purpose and would be likely to result in pollutant discharges to waters of the United States.

(3) Requirement to notify the Director when the permittee's Permit Nutrient Plan has been developed or revised. Notification of the development of the permittee's initial Permit Nutrient Plan must be submitted no later than 90 days after the CAFO submits its NOI or obtains coverage under an individual permit. With the notice, the permittee shall provide a copy of the cover sheet and executive summary of the permittee's current Permit Nutrient Plan that has been developed under 40 CFR 412.37(b).

OPTION 1 FOR PARAGRAPHS (j)(4) AND (5)

(4) *Transfer of manure to other persons*. The Director may waive the requirements of this paragraph if an enforceable state program subjects the recipient of CAFO wastes to land application requirements that are equivalent to the requirements in 40 CFR 412.31(b). The requirements of paragraph (f) of this section apply only to transfers to persons who receive 12 tons or more of wastes from the CAFO in any year. Prior to transferring manure and other wastes to other persons, the permittee shall:

(i) Obtain from each intended recipient of the CAFO waste (other than haulers that do not land apply the waste) a certification that the recipient will do one of the following. The certification must contain a statement that the recipient understands that the information is being collected on behalf of the U.S. Environmental Protection Agency or State and that there are penalties for falsely certifying. The permittee is not liable if the recipient violates its certification;

(A) Land apply the wastes in accordance with proper agriculture practices, which means that the recipient shall determine the nutrient needs of its crops based on realistic crop yields for its area, sample its soil at least once every three years to determine existing nutrient content, and not apply the manure in quantities that exceed the land application rates calculated using the method specified in 40 CFR 412.31(b)(1)(iv) chosen by the Director;

(B) Land apply the wastes in compliance with the terms of an NPDES permit that addresses for discharges from the land application area; or

(C) Use the manure for purposes other than land application.

(ii) Obtain from any commercial waste hauler the name and location of the recipient of the wastes, if known;

(iii) Provide the recipient of the manure with an analysis of its content; and

(iv) Provide the recipient of the manure with a brochure to be provided by the State permitting authority or EPA that describes the recipient's responsibilities for appropriate manure management.

(5) Record keeping requirements. Requirements to keep, maintain for five years and make available to the Director or the Regional Administrator:

(i) Records of the inspections and of the manure sampling and analysis required by 40 CFR 412.37(a);

(ii) Records required by 40 CFR 412.37(e) related to the development and implementation of Permit Nutrient Plans required by 40 CFR 412.37(b); and

(iii) Records of each transfer of wastes to a third party, including date, recipient name and address, quantity transferred, an analysis of manure content and a copy of the certifications required by paragraph (j)(4) of this section. If the waste is transferred to a commercial waste hauler, records of where the hauler indicated it would take the waste, if known. If the waste is to be packaged as fertilizer, incinerated or used for a purpose other than direct land application, records of the analysis of the manure are not required.

OPTION 2 FOR PARAGRAPHS (j)(4) and (5):

(4) Transfer of manure to other persons. Prior to transferring manure and other wastes to other persons, the permittee shall:

(i) Provide the recipient of the manure with an analysis of its content;

(ii) Provide the recipient of the manure with a brochure to be provided by the State permitting authority or EPA that describes the recipient's responsibilities for appropriate manure management; and

(iii) Obtain from any commercial waste hauler the name and location of the recipient of the wastes, if known.

(5) Record keeping requirements. Requirements to keep, maintain for five years and make available to the Director or the Regional Administrator:

(i) Records of the inspections and of the manure sampling and analysis required by 40 CFR 412.37(a);

(ii) Records required by 40 CFR 412.37(e) related to the development and implementation of Permit Nutrient Plans required by 40 CFR 412.37(b); and

(iii) Records of each transfer of wastes to a third party, including date, recipient name and address, quantity transferred, and an analysis of manure content. If the waste is transferred to a commercial waste hauler, records of where the hauler indicated it would take the waste, if known. If the waste is to be packaged as fertilizer, incinerated or used for a purpose other than direct land application, records of the analysis of the manure are not required.

(6) For CAFOs subject to 40 CFR 412.43 (existing swine, poultry and veal facilities), the Director must determine based on topographical characteristics of the region whether there is a likelihood that a CAFO may discharge from the production area via ground water that has a direct hydrologic connection to waters of the United States. If the Director finds there is such a likelihood, and the Director determines there is the potential for an excursion of State water quality standards due to such discharge, the Director must impose any water quality-based effluent limits necessary to comply with §122.44(d). The Director may omit such water quality-based effluent limits from the permit if the permittee has provided a hydrologist's statement that demonstrates to the Director's satisfaction that there is no direct hydrologic connection from the production area to waters of the United States.

(k) **What additional terms and conditions must be required in NPDES permits issued to**

CAFOs that are not subject to part 412, Subparts C and D?

(1) *All CAFOs not subject to part 412.* In cases where a CAFO has fewer than the number of animals necessary to make it subject to the requirements 40 CFR Part 412, and the Director is establishing effluent limitations on a case-by-case basis based on best professional judgment under section 402(a)(1)(B) of the Act, the Director shall consider the need for the following effluent limitations:

- (i) Limits on the discharge of process wastewater pollutants from the production area, including limits based on the minimum duration and intensity of rainfall events for which the CAFO can design and construct a system to contain all process-generated wastewaters from such event;
- (ii) Limits on discharges resulting from the application of manure to land, including restrictions on the rates of application of nitrogen and phosphorous;
- (iii) Requirements to implement best management practices to ensure the CAFO achieves limitations under paragraphs (1) and (2);
- (iv) Requirements to develop and implement a Permit Nutrient Plan that addresses requirements developed under paragraphs (1), (2) and (3); and
- (v) If the CAFO is in an area with topographic characteristics that indicate a likelihood that ground water has a direct hydrologic connection to waters of the United States, requirements necessary to comply with § 122.44, unless the permittee submits a hydrologist's statement that the production area is not connected to surface waters through a direct hydrologic connection.

(2) *CAFOs subject to part 412, Subparts A and B.* In addition to the applicable effluent limitations, when developing permits to be issued to CAFOs with horses, sheep or ducks subject to Subparts A and B of 40 CFR 412, the Director shall consider the need for effluent limitations for wastestreams not covered by Subparts A and B, including the need for the requirements described in paragraphs (k)(1)(ii) through (v) of this section.

(1) How will the public know if a CAFO is implementing an adequate permit nutrient plan?

(1) The Director shall make publicly available via the worldwide web or other publicly available source, and update every 90 days:

- (i) A list of all CAFOs that have submitted a notice of intent for coverage under a general permit, and
- (ii) A list of all CAFOs that have submitted a notice that their permit nutrient plan has been developed or revised.

(2) The Director shall make publicly available the notices of intent, notice of plan development, and the cover sheet and executive summary of the permittee's Permit Nutrient Plan. If the Director does not have a copy of the cover sheet and executive summary of the permittee's current Permit Nutrient Plan and the cover sheet and executive summary are not publicly available at the CAFO or other location, the Director shall, upon request from the public, obtain a copy of the cover sheet and executive summary. Until required by the Director, the CAFO operator is not required to submit cover sheet or executive summary to the Director.

(3) *Confidential business information.* The information required to be in Permit Nutrient Plan cover sheet and executive summary, and required soil sampling data, may not be claimed as

confidential. Any claim of confidentiality by a CAFO in connection with the remaining information in the Permit Nutrient Plan will be subject to the procedure in 40 CFR Part 2.

4. Section 122.28 is amended by:

- a. Removing the word “or” at the end of paragraph (a)(2)(i) and adding the word “or” at the end of paragraph (a)(2)(ii)(D).
- b. Adding paragraph (a)(2)(iii).
- c. Adding two sentences to the end paragraph (b)(2)(ii)
- d. Redesignating paragraph (b)(3)(i)(G) as paragraph (b)(3)(i)(H) and adding a new paragraph (b)(3)(i)(G).
- e. Adding paragraph (b)(3)(vi).

The additions read as follows:

§ 122.28 General permits (applicable to State NPDES programs, see § 123.25).

(a) * * *

(2) * * *

(iii) Concentrated animal feeding operations.

* * *

(b) * * *

(2) * * *

(ii) * * * Notices of intent for coverage under a general permit for confined animal feeding operations must include: a topographic map as described in § 122.21(f)(7); name and address of any other entity with substantial operational control; a statement whether the owner or operator has developed and is implementing its Permit Nutrient Plan and, if not, the status of the development of its Permit Nutrient Plan. New sources subject to 40 CFR Part 412 shall also provide a copy of a draft plan that, at a minimum, demonstrates that there is adequate land available to the CAFO operator to comply with the land application provisions of 40 CFR Part 412 or describes an alternative to land application that the operator intends to implement.

* * *

(3) * * *

(i) * * *

(G) The discharge is from a CAFO. In addition to the other criteria in paragraph (b)(3) of this section, the Director shall consider whether general permits are appropriate for the following CAFOs:

(1) CAFOs located in an environmentally or ecologically sensitive area;

(2) CAFOs with a history of operational or compliance problems;

(3) CAFOs that are exceptionally large operation as determined by the Director; or

(4) Significantly expanding CAFOs.

* * *

(vi) Prior to issuing any general permits for CAFOs, the Director, after considering input from

the public, shall issue a written statement of its policy on which CAFOs will be eligible for general permits, including a statement of how it will apply the criteria in paragraph (b)(3)(i)(G) of this section.

6. Remove Appendix B to part 122.

9. Part 412 is amended to read as follows:

PART 412 - CONCENTRATED ANIMAL FEEDING OPERATIONS (CAFOs) POINT SOURCE CATEGORY

Sec.

412.0 General applicability.

412.1 General definitions.

412.2 General pretreatment standards.

Subpart A - Horses and Sheep

412.10 Applicability.

412.11 Special definitions.

412.12 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).

412.13 Effluent limitations attainable by the application of the best available control technology economically achievable (BAT).

412.15 New source performance standards (NSPS).

Subpart B - Ducks

412.20 Applicability.

412.21 Special definitions.

412.22 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).

412.25 New source performance standards (NSPS).

412.26 Pretreatment standards for new sources (PSNS).

Subpart C - Beef and Dairy

412.30 Applicability

412.31 Effluent limitations attainable by the application of best practicable control technology currently available (BPT)

412.32 Effluent limitations attainable by the application of the best control technology for conventional pollutants (BCT)